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**OFFICE OF PETITIONS**

In re Application of :  
Jeffrey Jovan Philyaw :  
Application No. 09/382,372 : DECISION ON RENEWED  
Filed: August 24, 1999 : PETITION UNDER 37 C.F.R.  
Attorney Docket Number: : \$1.137(A)  
PHLY-24738 :  
Title: METHOD AND APPARATUS :  
FOR MATCHING A USER'S USE :  
PROFILE IN COMMERCE WITH A :  
BROADCAST :

This is a decision on the renewed petition filed July 9, 2007, under 37 C.F.R. \$1.137(a)<sup>1</sup>, to revive the above-identified application.

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed October 25, 2006, which set a shortened statutory period for reply of three months. No extensions of time are permitted for transmitting issue fees<sup>2</sup>. Accordingly, the above-identified application became abandoned on

<sup>1</sup> A grantable petition pursuant to 37 C.F.R. \$1.137(a) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in 37 C.F.R. \$1.17(1);
- (3) A showing to the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable;
- (4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. \$1.20(d)) required pursuant to paragraph (d) of this section.

<sup>2</sup> See MPEP \$710.02(e).

January 26, 2007. A Notice of Abandonment was mailed on February 27, 2007.

An original petition was filed on March 14, 2007, along with the petition fee, the issue fee, and a statement of facts that asserted that the mailing was not received. The original petition was dismissed via the mailing of a decision on June 14, 2007 for failure to establish that the mailing was not timely received.

With this renewed petition, Petitioner has submitted a copy of the docket record where the nonreceived Office communication would have been entered had it been timely received and docketed.

Consequently, Petitioner has met the requirements of Delgar v. Schuyler, 172 USPQ 513 (D.D.C. 1971), in that he has asserted that the Office communication was not received, that he has searched both the file jacket and the docket record, and he has included a copy of the latter.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that the mailing was not received. Accordingly, the petition under 37 C.F.R. §1.137(a) is GRANTED. The holding of abandonment is WITHDRAWN.

The Technology Center will be notified of this decision. The Technology Center's support staff will re-mail the Notice of Allowance and Issue Fee Due, and will set a new period for response.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225<sup>3</sup>. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



**Paul Shanoski**  
**Senior Attorney**  
**Office of Petitions**  
**United States Patent and Trademark Office**

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<sup>3</sup> Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).